

REMARKS

In the Office Action, claims 1-45 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting; and claims 1-45 are rejected under 35 U.S.C. §102 or, in the alternative, under 35 U.S.C. §103. Claims 1, 8, 12, 17, 24, 29, 30 and 40 have been amended; and claims 4, 23 and 44 have been canceled without prejudice or disclaimer. Applicants believe that the rejections have been overcome in view of the amendments and at least for the reasons set forth below.

At the outset, claims 1-45 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1-42 of co-pending Application No. 10/327,264. Of the pending claims at issue, claims 1, 8, 17, 24, 30 and 40 are the sole independent claims. As previously discussed, each of these claims has been amended and as now amended provide, in part, a second acidic solution part including a buffer concentrate that has a pH less than 5.5. This is distinguishable from the subject matter as defined by claims 1-42 of the co-pending application that recites solutions that require, in part, a solution part with a pH ranging from 7.0 to about 12.0. Thus, Applicants believe that the provisional obviousness-type double patenting rejection should be withdrawn for at least these reasons.

In the Office Action, claims 1-45 are rejected under 35 U.S.C. §102 or, in the alternative, under 35 U.S.C. § 103 as obvious over European Patent No. 0951915 A2. Applicants believe that this rejection should be withdrawn as discussed below in greater detail.

The dialysis solutions as claimed include separately formulated and sterilized solution parts that are combined to form a ready-to-use solution with enhanced biocompatibility. The solution parts include a first acidic solution part and a second acidic solution part wherein the first acidic solution part at least include a dextrose concentrate and wherein the second acidic solution part at least include a buffer concentrate, such as a lactate-based buffer. See, Specification, for example, page 9, lines 9-15.

Of the pending claims at issue, claims 1, 8, 17, 24, 30 and 40 are the sole independent claims. As previously provided, each of these claims has been amended and as amended now provides, in part, that the second acidic solution part including a buffer concentrate has a pH that is less than 5.5.

Applicants believe that the cited reference is distinguishable from the claimed invention. At a minimum, nowhere does this reference disclose or suggest a dialysis solution that is formulated from two acidic solution parts where a first solution part includes dextrose and the second solution part includes a buffer concentrate, such as a lactate-based concentrate, and wherein the second solution part has a pH that is less than 5.5. In contrast, the cited reference provides a buffer solution that has a pH of approximately between 6 and 8.5. See, EP 0951915 A2, page 3, paragraph 19. Indeed, the reference effectively teaches away from a buffer solution with a pH that is less than 5.5 as claimed where the final resultant medical solution of the reference after mixing is substantially neutral, for example with a pH value between 6.5 and 7.5, preferably about 7.0. See, EP 0951915 A2, paragraph 6. Therefore, Applicants believe that the cited reference fails to anticipate and render obvious the claimed invention.

Accordingly, Applicants respectfully request that the anticipation and alternative obviousness rejections in view of EP 0951915A2 be withdrawn.

For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicit reconsideration of same.

Respectfully submitted,

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